

Office Action Summary

Application No.

10/706,184

Applicant(s)

SAMMUT ET AL.

Examiner

Michelle (Shelley) Clement

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-83 is/are pending in the application.
- 4a) Of the above claim(s) 48, 49, 55-72 and 81-83 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-47, 50-54, 73-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

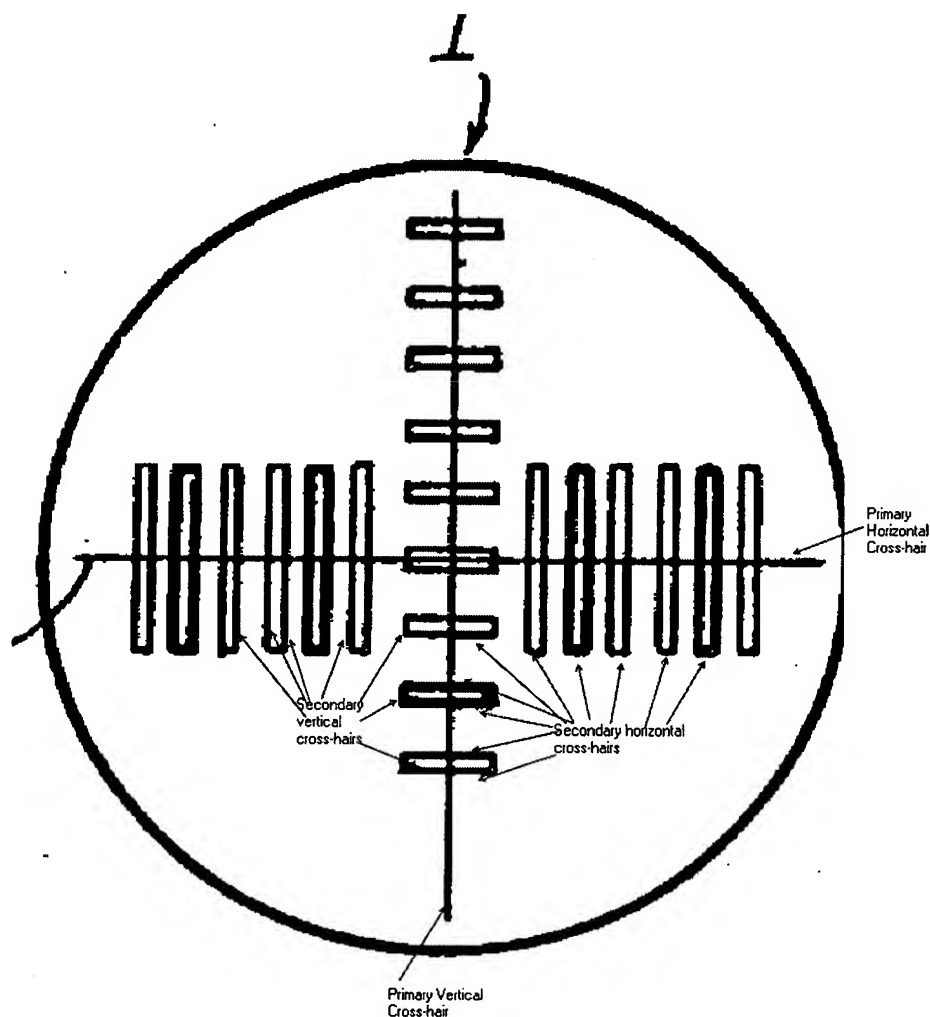
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed 4/19/07 have been fully considered but they are not persuasive. In response to applicant's contention that Heidmann does not disclose the claimed invention because Heidman does not disclose a visible secondary vertical cross-hair along a visible secondary horizontal cross-hair, this is clearly not the case as shown in the figure below. Furthermore, spider-line 33 constitutes an additional secondary horizontal cross-hair constituting an output identifying an aiming point for hitting a target.



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In response to applicant's arguments against the Moore and Reese references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Reese reference is relied upon for the teaching of the particular reticle comprising the specific cross-hair configuration. It is the teaching of the reticle of Reese that is combined with the sighting device of Moore and the output using secondary cross-hairs to identify an aiming point for hitting a target. It is what the combination of the references would suggest to one of ordinary skill in the art that is utilized for the rejection. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). It is noted that if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill and the improvement is no more than the predictable use of prior-art elements according to their established functions. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007).

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

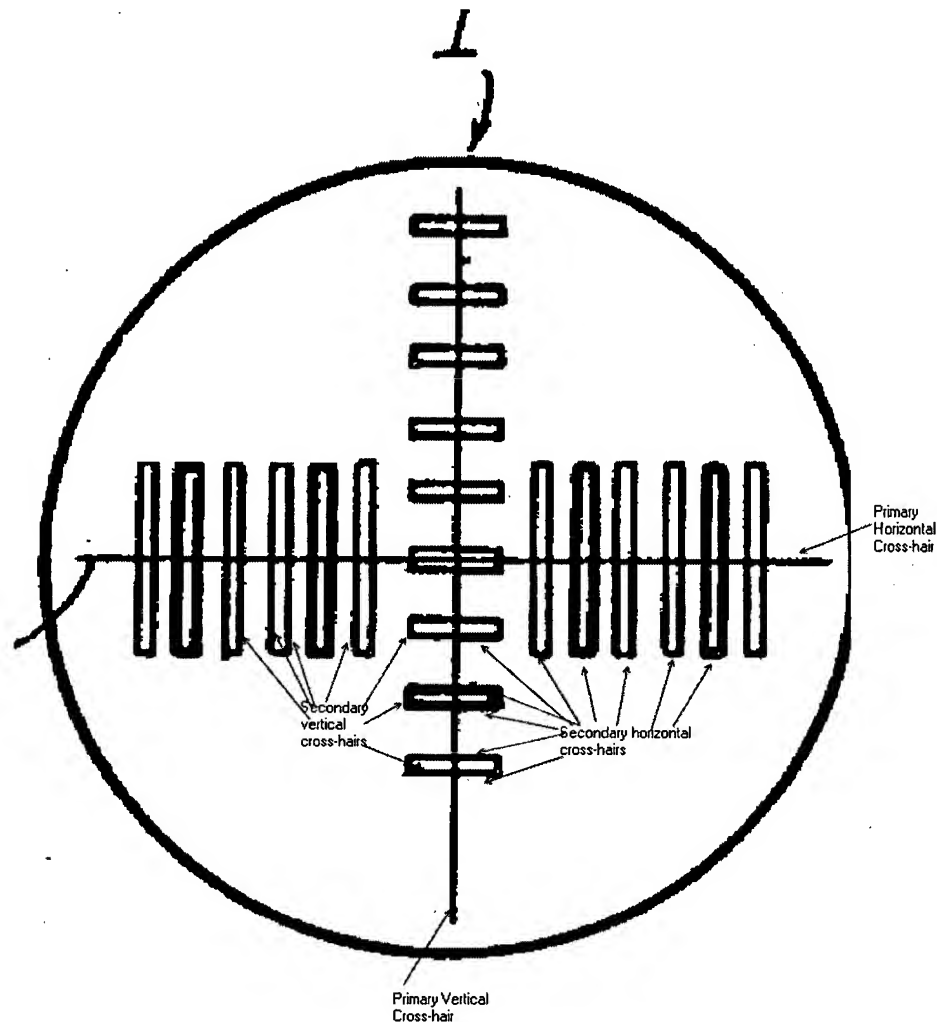
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 45-47, 50, 51, 53, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Heidmann et al. (US Patent # 4,671,165). Heidmann et al. discloses a ballistics calculator system for computing targeting information to hit a target, comprising a processor, the processor comprising a ballistics computer program for analyzing information to accurately aim a firearm at a target using a target acquisition device with a reticle, the program using information regarding the target acquisition device and reticle being used, wherein the type of target acquisition device and reticle comprise, a reticle comprising a plurality of simultaneously visible secondary horizontal cross-hairs at predetermined distances along a simultaneously primary visible vertical cross-hair and a plurality of simultaneously visible secondary vertical cross-hairs at predetermined distances along at least some of the simultaneously visible secondary horizontal cross-hairs and an output using the visible secondary horizontal cross-hairs and visible secondary vertical cross-hairs to identify an aiming point for hitting the target. The reticle comprises a simultaneously visible primary vertical and simultaneously visible horizontal cross-hair. At least

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some of the visible secondary horizontal and visible vertical cross-hairs are evenly spaced and are connected to form a grid (Figure 2). Information regarding the target acquisition device and reticle being used can include the positional relationship between the target acquisition device and the firearm.



Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 45 and 75-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US Patent # 4,965,439) in view of Reese (US Design Patent # Des. 306, 173). Moore discloses a ballistics calculator system for computing targeting information to hit a target, comprising a processor, the processor comprising a ballistics computer program for analyzing information to accurately aim a firearm at a target using a target acquisition device with a reticle, the program using information regarding the target acquisition device and reticle being used, wherein the type of target acquisition device comprising a housing, a means for mounting the housing in a fixed, predetermined position relative to a firearm, an objective lens mounted in one end of the housing, an ocular lens mounted in an end opposite the objective lens of the housing, a projected image. The processor is configured to display information on a display screen, the information displayed is an image of a reticle on the display screen showing a position of the aiming point. Although Moore does not expressly disclose the reticle comprising a plurality of simultaneously visible secondary horizontal cross-hairs at predetermined distances along a simultaneously primary visible vertical cross-hair and a plurality of simultaneously visible secondary vertical cross-hairs at predetermined distances along at least some of the simultaneously visible secondary horizontal cross-hairs and an output using the visible secondary horizontal cross-hairs and visible secondary vertical cross-hairs to identify an aiming point for hitting the target. The reticle comprises a simultaneously visible primary vertical and simultaneously visible horizontal cross-hair, Reese does. Reese teaches a reticle having the specified cross-hairs and secondary cross-hairs. Moore and Reese are analogous art because they

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are from the same field of endeavor: sighting devices. Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the reticle with the specific cross-hairs as suggested by Reese with the ballistic calculator as disclosed by Moore.

The suggestion/motivation for doing so would have been to obtain an optical instrument that had an improved reticle as suggested by Reese. since it has been held that when a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill and the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740, 1739, 82 USPQ2d 1385 (2007).

7. Claims 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidmann et al. as applied to claim 45 above, and further in view of Wascher et al. (US Patent # 5,491,546). Although Heidmann et al. does not expressly disclose at least some of the secondary horizontal and vertical cross-hairs having identifying marks, and the reticle including range finding markings on the reticle, Wascher et al. does. Wascher et al. teaches a target acquisition device and reticle, wherein the reticle comprises primary vertical and horizontal cross-hairs that intersect at an optical center of the reticle and wherein at least some of the secondary horizontal and vertical cross-hairs have identifying marks, the reticle further including range finding marks on the reticle. Wascher et al. and Heidmann et al. are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the position of the reticle and identifying marks as taught by Wascher et al. with the device as disclosed by Heidmann et

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al.. The suggestion/motivation for doing so would have been to obtain a sighting system that included the range determining features for more accurate aiming as suggested by Wascher et al.

8. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heidmann et al. as applied to claim 45 above, and further in view of Cohen (US Patent # 5,375,072). Although Heidmann et al. does not expressly disclose that the device comprises an elevation knob and the system providing an output of how much the knob should be turned to adjust a position of the target acquisition device relative to the firearm, Cohen does. Cohen teaches the processor and the target acquisition device being separate units wherein the processor provides an output informing the user how much a windage knob must be turned to adjust a position of the target acquisition device so that an intersection of the primary vertical cross-section and the primary horizontal cross-hair can be used as the aiming point. Cohen and Heidmann et al. are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the separation of components as taught by Cohen with the device as disclosed by Heidmann et al., since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and Cohen specifically teaches the components separately.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after


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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHELLE CLEMENT
PRIMARY EXAMINER